Supreme Court, U.S.
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No. 01-1036

In the Supreme Court of the United States

BAY MILLS INDIAN COMMUNITY,
Petitioner,

v.

STATE OF MICHIGAN, MICHIGAN STATE UNIVERSITY
As successor to the Board of Agriculture of the State of Michigan,
and JOHN ENGLER, Governor of the State of Michigan,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE STATE OF MICHIGAN

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. In 1881 did the Trade and Intercourse Act (25 USC 177) prevent the State of Michigan from selling Indian tribal Land acquired by an Indian Tribe in fee in 1857 for non-payment of property taxes?

2. Appellant's property, tribal lands purchased in fee in 1857 were listed on the "non-resident tax role," and no notice of delinquency or sale and no opportunity for redemption were given the Tribe. Assuming that Appellant Indian Tribe had a cause of action against the State of Michigan for taking of its Tribal lands in a tax sale, for denial of due process and equal protection under the Constitution of the United States, must that action be brought only under 42 USC 1983, or does the Constitution of the United States support an action for violation of its due process and equal protection clauses?

3. Does this Court's ruling in Cass County Minnesota vs Leech Lake Band of Chippewa Indians, 524 US 103; 118 S Ct 1904; 141 L Ed2d 90 (1998) bar plaintiff's action when plaintiff's tribal land was taken by the State of Michigan for non-payment of real property taxes in spite of the fact that Congress never removed its trust status.

PARTIES TO THE PROCEEDINGS

Petitioner

Petitioner, Bay Mills Indian Community is a federally recognized Indian Tribe located on its reservation outside of the town of Brimley in Michigan's Upper Peninsula.

Respondents

The State of Michigan, its Governor, John Engler as trustee, successor in office, and Michigan State University (as successor to the Michigan State Board of Agriculture)

Other Parties

There are no other parties

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Bay Mills Indian Community respectfully requests that this Court issue a Writ of Certiorari to review the order entered by the Michigan Court of Appeals and which the Michigan Supreme Court in an order dated October 18, 2001 refused to review.

OPINIONS BELOW

The Order of the Michigan Supreme Court refusing to review the Opinion and Order of the Michigan Court of Appeals has not yet been published, but will appear at ___ Mich.___(2001). It has been reproduced at Appendix A. The Opinion and Order of the Michigan Court of Appeals is published and appears at 244 Mich. App. 739, 626 NW2d 169 (2001) and is reproduced in whole in Appendix B. The opinions and orders appealed from and entered by the Michigan Court of Claims are not published. They are reproduced at Appendix C.

JURISDICTION

The Michigan Supreme Court issued its Order refusing to hear the appeal of Bay Mills Indian Community from the decision of the Michigan Court of Appeals on October 18, 2001. This Court has jurisdiction under 28 USC 1257 (a).

CONSTITUTIONAL PROVISIONS INVOLVED

The due process clause of Fifth and Fourteenth Amendment to the United States Constitution, and the equal protection clauses of the Fourteenth Amendment to the Constitution of the United States provide a right to be notified and heard in any action designed to take away one's peaceful enjoyment of property. In this case the property of plaintiff's predecessor was listed on the non-resident tax role. No notice

of delinquency, sale or redemption was given owners of property listed on the non-resident tax role.

Throughout its early history, the State of Michigan never treated Indian tribes who were owners of real property consistently, denying some (plaintiff herein) equal protection.

STATEMENT OF THE CASE

In July of 1855 the United States entered into a treaty with the Chippewa Indians of the Upper Peninsula of the State of Michigan (11 Stat 621) wherein certain lands were reserved to the Indians. The land in question in this case was within the lands reserved to the Indians in that treaty. (See: Appendix D, Appellant's Complaint in the Court f Claims, pg. 1)

Before Congress could ratify the Treaty or the Executive could withdraw the lands by Executive Order, Boziel Paul purchased the land which is at issue in this case. (See: Appendix D, Appellant's Complaint in the Court of Claims, pg. 1.) It was widely known that lands of Indians could be taken from them by various schemes of the white man. Indians were impoverished and for the most part illiterate. Individual Indians commonly lost lands to speculators and others that prayed upon them while tribal lands were protected by Act of Congress.

There were numerous occasions in the State of Michigan where Indian tribal lands were deeded... "to the Governor of the State, and his successors in office, for the use and benefit of..." an Indian tribe as a means of protecting the title to the land and safeguarding it for the Indians in perpetuity. (See: Appendix D, Appellant's Complaint in the Court of Claims pg. 1.) The State of Michigan treated tribal ownership of lands without any consistency.

In one such instance involving lands in Lapeer County a Justice of the Supreme Court of the State of Michigan wrote the then Governor of the State that the Indians wanted to sell their lands but could not since they had but the equitable title and the Governor was sitting with the legal title. The Justice asked the Governor to execute a deed, which he did, allowing

the lands to be sold.

In another instance, lands near Athens, Michigan became a State Indian Reservation for which there is no legislative authority.

In yet another instance, the Michigan Legislature voted, by Joint Resolution No 20 of the regular Session of the Michigan Legislature of 1903, replacement lands to a Tribe who had lost their lands by tax sale.

In 1857 Boziel Paul and his wife Mary conveyed the property which is the subject of this action "to the Governor of the State of Michigan and his successors in office in trust for the benefit of the two tribes of Indians of which Sho Wan and O Sho Wan O were chiefs." (See: Appendix D, pg 35a, Appellant's Complaint in the Court of Claims, pg. 1.)

The land was placed on the non-resident tax role by the County Assessor. Owners of lands on the non-resident tax role received no notice of taxes due, no notice of delinquency and no notice of tax sale or redemption. Statutes in existence at the time, 1875-1885 has indicated that only the resident roll received notice and persons who were on the non-resident tax roll received no notice of tax due, tax sale, or redemption rights.

In 1884 and 1885 by a series of deeds the Auditor General of the State of Michigan deeded the Indian tribal lands claimed by the Plaintiff herein to third parties for failure of the Indian tribes to pay real property taxes. After sale, the Indians were evicted from the lands. (See: Appendix D, pg 37a, Appellant's Complaint in the Court of Claims, pg. 3)

Plaintiff, Bay Mills Indian Community, as successor to the two tribes for which the lands were placed in trust, brought this action against the State of Michigan and other interested parties in possession contending (See: Appendix D, pg 36a, Appellant's Complaint in the Court of Claims, pg. 2):

> 1. That the taxing statute of the State of Michigan was violative of the Constitution of the United States since it provided no notice to the owners of lands placed on the non-residence tax roll thereby denying the plaintiffs predecessors due process of law. (See: Appendix D pg 39a, Appellant's Complaint in the Court of Claims, pg. 5)
>
> 2. That the Non Intercourse Act, 25 USC 177, prevented the State of Michigan from transferring title to Indian lands without the permission of the federal Govemment. (See; Appendix D, pg 38a, Appellant's Complaint in the Court of Claims, pg. 4
>
> 3. That the lands in question being Indian tribal lands were non taxable in the first instance. (See: Appendix D pg 38a, Appellant's Complaint in the Court of Claims, pg. 4,5)
>
> 4. That the State of Michigan violated the United States Constitution's due process and equal protection clauses. (See: Appendix D, pg 40a-41a, Appellant's Complaint in the lower court pg. 5, 6)

5.[1] That the State of Michigan violated the State of Michigan constitution's due process and equal protection clauses. (See: Appendix D pg 39a-40a Appellant's Complaint in the lower court, pg. 4, 5)

6. That the Governor of the State of Michigan and his successors in office violated their fiduciary responsibility. (See: Appendix D, pg 37a-38a, Appellant's Complaint in the lower court Pg. 3-5)

As indicated in the next section, the Court of Claims granted Summary Disposition to the defendant State of Michigan on each of the Plaintiff's theories above set forth.

STATEMENT OF PROCEEDINGS IN THE LOWER COURT:

This action was commenced in the Michigan Court of Claims, a Court with jurisdiction over claims against the State of Michigan. This Court did not exist when the claims of the plaintiff first accrued. As to each of the plead theories of recovery against the State of Michigan, the Court of Claims granted Summary disposition. In each such case, the Court of Appeals of the State of Michigan affirmed. (See; Appendix B Opinion of the Michigan Court of Appeals.) The Supreme Court of the State of Michigan denied leave to appeal. (See; Appendix A, Order of the Supreme Court of the State of Michigan.)

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[1] Issues No. 5 and 6 above are not appealed to the United States Supreme Court in this petition.

The claims of the plaintiff and the specific holdings of the Court of Claims and the Court of Appeals (The Michigan Supreme Court refused Leave to Appeal.) are set forth as follows:

1. That the taxing statute of the State of Michigan was unconstitutional since it provided no notice of delinquency, sale or redemption to the owners of lands placed on the non -resident tax roll.

The Court of Claims and the Court of Appeals both held that all such causes of action were barred by the Statute of Limitations of the State of Michigan and that any federal cause of action which the plaintiff might posess had to be brought under 42 USC 1983. Both courts further held that since 42 USC 1983 did not apply to States, plaintiff had no federal cause of action which it could bring against the State of Michigan. (See: Orders and opinions of the Court of Claims at Appendix D. and of the Court of Appeals at Appendix B.)

2. That the Non-Intercourse Act, (25 USC 177), prevented the State of Michigan from transferring title to Indian lands without the permission of the Federal Government.

The Court of Claims and the Court of Appeals both held that the Non-Intercourse Act only applied to voluntary conveyances of lands from an Indian tribe and not to involuntary actions such as conveyance by the State of Michigan for non payment of taxes. (See: Opinions and orders of the court of claims at Appendix D. and of the Court of Appeals at Appendix B.)

3. That the lands in question, being Indian tribal lands were non taxable in the first instance.

The Court of Claims held that these Indian Tribal lands are taxable by the State of Michigan, resting its decision solely upon a total what plaintiff believes to be a misunderstanding of the Supreme Court of the United State's reasoning in Cass County et al vs Leech Lake Band of Chippewa Indians, 524 US 103, 118 S. Ct. 1904, 141 L. Ed2d. 90 (1998). These courts indicated that that Indian tribal lands of the Bay Mills Indian Community were taxable even though they were tribally owned lands. Petitioner plaintiff believes that such a construction of the *Cass County* case is a misunderstanding of the Court's holding. (See: Orders and Opinions of the Court of Claims at Appendix D, and Opinion of the Court of Appeals at Appendix B.)

4. That the State of Michigan violated the United States Constitution's due process and equal protection clauses by failing to give plaintiff's predecessors notice of delinquency and sale, and by treating plaintiff's predecessors differently than they treated other Indian tribes similarly situated.

The court of claims and the Court of Appeals determined that plaintiff's due process and equal protections claims could only be asserted by the plaintiff under 42 USC 1983. Since 42 USC 1983 has been held not to apply to States, plaintiff has no federal constitutional claims that can be heard by the court. Both Courts denied the existence of a direct constitutional cause of action. (See; Orders and opinions of the Court of Claims at Appendix D and opinion of the Court of Appeals at Appendix B.)

5.[2] That the State of Michigan violated the due process and equal protection clauses of its own constitution.

The Court of Claims held that any such cause of action was barred by the State Statute of Limitations. (Appellant has decided not to further appeal this question.)

6. That the Governor and his successors in office violated their fiduciary duties.

The Court of Claims and the Court of Appeals held that the Governor could not act as a fiduciary since there was no legislative authority allowing him to do so, ignoring the fact that he did so and ignoring the continuing nature of the fiduciary responsibility of the State.

On appeal to the Michigan Court of Appeals, the Court affirmed the holdings of the Michigan court of Claims. This issue being a purely state issue is not included in this Application.

REASONS FOR GRANTING THE WRIT OF CERTIORARI TO THE MICHIGAN SUPREME COURT

1. The Non-Intercourse Act, 25 USC 177, has been interpreted by the Michigan courts to prevent only voluntary alienation of Indian Tribal land, a decision which is clearly erroneous.

(This case brings to this Court the very set of facts

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[2] Plaintiff, Bay Mills Indian Community has decided not to further appeal No. and No. 6, above, being solely state claims.

which the Court indicated it would not opine upon in n5 of Cass County vs Leech Lake Band of Chippewa Indians, 524 U.S. 103;118 S.Ct. 1904; 141 L.Ed2d 90 (1998) in that the land in question here is land acquired by an Indian Tribe in fee after the land was subject to purchase under the general land Sales act and then withdrawn by eventual Executive Order.)

Indians and Indian tribes have been, since the earliest days of the Union, wards of the United States. Treaties with the Indians must be interpreted as they would have understood them. Choctaw Nation vs. Oklahoma, 90 S. Ct. 1328; 397 U.S. 620; 25 L. Ed2d 615; rehearing denied, 90 S. Ct. 1834; 398 U.S. 945; 26 L.Ed2d 285 (1970). Acts of Congress must be interpreted so as to give the greatest protection possible to Indians. U.S. vs Drummond,(D.C. Okla 1941) 42 Fed. Supp. 958, affirmed 131 F2d 568, and statutes must be liberally construed in favor of the Indians.

Even before statehood, The Territory of Michigan treated the Indians with care, concern and protection and made it policy that their lands could never be taken from them. Northwest Ordinance of 1787, Art. 3:

> "The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and in their property, rights, and liberty they shall never be disturbed..."

Early in statehood, the Supreme Court of the State of Michigan held that the Auditor General, on a tax sale; could not convey Indian property that was subject to a federal restraint on alienation for non payment of taxes. Auditor

General vs. Williams, 94 Mich 180 (1892). In the words of the Court, the State could "Not do by indirection what it could not do directly." The Michigan Supreme Court held that Indian Tribal lands could not be conveyed without the consent of Congress regardless how the Indian tribe obtained title to the lands in question. See also: Tuscorora Indian Nation vs. Federal Power Commission, 265 Fed2d 584, reversed on other grounds 80 S.Ct. 543; 362 U.S. 99; 4 L. Ed2d 584; rehearing denied 80 S.Ct. 858; 362 U.S. 956; 4 L.Ed2d 873 (1959).

Title to the lands which are the subject of this action was obtained beneficially by the Plaintiff's predecessors when one Boziel Paul deeded the subject lands to the "Governor of the State of Michigan and his successors in office in trust for the benefit of the two bands of Indians of which Sho-Wan and O-Sho-Wan-O are chiefs." The deed was executed in 1857.

In 1884 and 1885 the Auditor General of the State of Michigan, disregarding the tribal nature of the lands and the fact that the lands were not alienable,(Due both to the laws of the United States and the trust nature of the deed of Boziel Paul.) deeded the lands to third parties for non- payment of real estate taxes.

The sole basis for a finding by the Court of Claims and the Court of Appeals of the State of Michigan that the subject tribal lands were in fact taxable was the court's interpretation of the reasoning of Cass County vs. Leech Lake Band of Chippewa Indians, 524 U.S. 103; 118 S. Ct. 1904; 141 L. Ed2d 90 (1998), which plaintiff believes both court's either didn't understand, or misinterpreted.

The Leech Lake Indian Reservation in northern Minnesota was set aside for the Leech Lake Band of

Chippewa Indians pursuant to a treaty entered into with the Chippewa in 1855. This particular Band of Indians was dealt with in the Nelson Act of 1889 (25 Stat 642) wherein the Band's reservation lands were alienated, by Congress, from this Band's ownership in three ways: 1) by allotment of parcels of the reservation lands to individual Indians and 2) by sale of the reservation lands at public auction and 3) by sale of the reservation lands to non-Indians.

After 1977, the Band began to purchase back these same reservation lands from persons who had received them from auction sales, general sale, and allotment. In 1993 Cass Lake County began to tax 21 of the parcels that had been reacquired by the Band. The Supreme Court of the United States held that once Congress has made it clear that the Indian tribal lands were no longer under federal protection by dealing with them such as they did in the Nelson Act, and allowing for their sale; the lands when reacquired by the tribe were taxable:

> "When Congress makes Indian reservation lands freely alienable, it manifests an unmistakably clear intent to render such land subject to state and local taxation. The repurchase of such land by an Indian Tribe does not cause the land to resume tax exempt status."

Cass County et al vs Leech Lake Band of Chippewa Indians, 524 US 103, 118 S. Ct. 1904; 141 L. Ed2d 90 (1998)

The United States Supreme Court clearly equates Indian real estate tax exemption to the inalienability of the land. If Indian tribal land is inalienable, it is not taxable, unless the federal government has given its approval to a sale

of the tribal lands or otherwise has removed federal protection.

Cass County et al vs Leech Lake Band of Chippewa Indians, Ibid, clearly indicates that the land in question must be Indian land first, then subject to Congressional action removing federal protection. If Indian Reservation land is sold off with the consent of Congress, it becomes taxable even if repurchased by the Tribe. However there are some prerequisites to this holding which seem to be ignored by both the Court of Claims and the Court of Appeals: 1) The Land must be Indian reservation land from which Congress removes federal protection. 2) Congress must make it unmistakably clear that the land is free from the trust status and protection of the United States.

None of these prerequisites occurred as to the land in question in the instant case. For example:

1. Congress did not act in regard to the land of the Plaintiff at any time after it became reserved under the Treaty with the Chippewa of the Sault Ste. Marie Bands in 1855 except to cause its removal from sale and application of the General Land Sales Act. There is no unmistakable, clear intention of Congress that the land of plaintiff's predecessors is not under federal protection. In fact, Congress has never spoken on the issue of these lands purchased in fee by the plaintiff's predecessors. The Court of Claims and the Court of Appeals indicate that the General Land Sales Act was an unmistakable intent of Congress that the land be taxed. Both Courts ignore the fact that the land was not reservation land, nor tribal land when the General Sales Act was passed, thus federal protection was not removed. In fact, when Congress eventually approved and ratified the treaty of 1855 with the Chippewa, that was a clear intent of the Congress that the

land NOT be taxed and that federal protection would inure to the land. Unfortunately, before the land could be withdrawn under the terms of the treaty, Boziel Paul purchased it.

2. The land was never sold after it became Indian tribal land except by the unlawful and illegal acts of the State of Michigan which hardly constitutes a clear intention of Congress. It is this petitioner's position that the State of Michigan had no authority to sell these Indian tribal lands without the consent of the United States Congress.

The errors of the Court of Claims and Court of Appeals in reading and applying the Cass County vs. Leech Lake Band of Chippewa Indians case constitute a clearly erroneous decision:

The Court of Claims' and the Court of Appeals' understanding of the *Leech Lake* case is in substantial error. The case does not deal with reservation lands taxability, but rather the taxability of reservation land after it ceases to be reservation land by act of Congress and is repurchased. When Congress allows its sale to third persons, and the land later comes back into the hands of an Indian Tribe through purchase, the intent of Congress was to remove federal protection. The Leech Lake Band of Indians saw Congress dismantle and sell its reservation. The tribe started to buy the land back and contended that when they repurchased former reservation land, it again became non taxable. The Supreme Court of the United States held that once Congress manifests a clear intent that the land be taxable as it did as to the Leech Lake reservation land, it is still taxable when the Indian tribe repurchases it. That holding and reasoning is simply not applicable to the instant lands at issue in this case because:

1. The lands were not reservation lands that were repurchased after Congress manifested an intent that they be taxed. In fact, the only intent that can be clearly seen is when Congress ratified the Treaty with the Chippewas thus removing the lands in question from sale under the General Land Sales Act. Unfortunately, this land was sold before it could be removed from sale. Congress is entirely silent as to the land at issue in this case after it became Indian Tribal Land, having never made any pronouncements on or about it, and never having consented to its sale or removed federal protection.

2. The Michigan Courts were incorrect when they decided that the Trade and Intercourse Acts, specifically 25 USC 177, only applied to voluntary conveyances of land by an Indian Tribe and did not apply to a state tax sale for non payment of real estate taxes.

The Court of Claims granted the Defendants Summary Disposition on all of Plaintiff's federal law claims asserted in this action. Those claims were: 1. That under federal law the State of Michigan cannot tax Indian tribal lands.
2. That under the Trade and Intercourse Act, 25 USC 177, the State of Michigan cannot deed Indian tribal lands for tax sales.
3. That the State of Michigan violated the plaintiff's federal common law rights, AND
4. That the State of Michigan denied the plaintiff due process and Equal protection of the laws.

Bay Mills Indian Community's tribal predecessors either purchased the land in question in this case, or it was purchased for them. The lands were tribal, and were non-

alienable automatically coming under the protection of Congress.

At the least, the Indian tribes had beneficial title to the land. At the most they had fee title to the land in the names of two Indian tribes. It is one of the theories of the Plaintiff that the State of Michigan could not have deeded the Indian owned land to anyone without the permission of the United States due to the Trade and Intercourse Act, 25 USC 177.

The Court of Claims granted Summary Disposition and the Court of Appeals affirmed with the Supreme Court of the State of Michigan refusing to hear the case, holding that the Trade and Intercourse Act applied only to voluntary conveyances by the tribes themselves and not to conveyances by the State for non payment of taxes. The Courts of Michigan apparently ignoring a long string of United States Supreme Court decisions and a decision of the Michigan Supreme Court in Auditor General vs Williams, 94 Mich 180 (1892) that Indian lands could neither be taxed nor sold for nonpayment of taxes.

The Court of Claims, in granting Summary Disposition and discussing the Non-Intercourse Act, said:

> "...it is clearly addressed to voluntary alienation of Indian owned land, not tax sales of the land purportedly held in trust for Indians."

See: Appendix D, Opinion and Order of the Court of Claims dated 1-29-99.

The holding of the Michigan Court of Claims, affirmed by Michigan's Appellate Courts flies in the face of

a long history of decisions of federal courts, at all levels, to the contrary, and should not be allowed to stand.

The Court of Appeals applies a different reasoning than any other court to the application of the Trade and Intercourse Act. The Michigan Courts hold that by giving Boziel Paul a patent to the land, Congress and the United States relinquished any trust relationship it had. And that when the Indian tribe acquired the land by fee, it did not regain its protected status. That is clearly wrong. The trust relationship under the Trade and Intercourse Act doesn't come into being until the land becomes Indian tribal lands, which in this case was when Boziel Paul deeded the land at least beneficially, to the two Indian tribes, Plaintiffs predecessors. It is then that the Act asserts its protection. The decision of the Michigan Courts in this case clearly undercuts and interferes with federal law.

3. The Trade and Intercourse Act, 25 USC 177 creates a trust relationship with the United States and no State may convey Indian owned lands without the permission of the federal government. No Indian Tribe holds legal title to its lands and no State can extinguish an Indian tribal title to land:

As early as 1825, the Federal Courts of the United States held that Indians do not hold legal title to fee lands. Seisin of lands of Indian tribes is in the Sovereign. Jackson vs. Porter, (CC NY 1825) Fed. Case No 7, 143. Only the Sovereign, the United States, can extinguish that title. Joint Tribal Council of Passamaquoddy vs. Morton, (CA. Me 1975) 528 F2d 370; Bennett County, S.D. vs. US, (CA SD 1968) 394 F2d 8; U.S. vs 7,4053 Acres of Land, (CC ANC 1938) 97 F2d 417.

Thus, Plaintiffs predecessors could not hold legal title to the subject land. It was held either by the Governor of the State of Michigan in Trust or by the federal government. In either case, the land was inalienable and non taxable.

The following cases and citations are all illustrative of the fact that Indian Lands may not be conveyed **in any way, voluntarily or non-voluntarily** without the permission of the United States:

1. In United States vs. 2,005.32 Acres of Land, (1958 DC SD) 160 F. Supp 193, the federal court held that a state may not condemn Indian lands without permission of the United States. Even the United States could not condemn Indian lands without the approval of Congress. Bear vs. United States, (1985 DC Neb) 611 F. Supp 589, aff'd (1987 CA8, Neb) 810 Fed2d 153. If a state could not condemn Indian tribal lands, it certainly couldn't sell them for non-payment of taxes.

2. The property of Indians may not be taken from them by adverse possession or otherwise without the consent of the United States. United States vs 7,405.3 Acres of Land, (1938, CA4 NC) 97 Fed2d 417.

3. Indian title to land is a matter of federal law and cannot be extinguished without federal consent. United States vs Boylan, (1920, CA2 NY) 265 F 165. This opinion relies upon numerous Supreme Court of the United States decisions in support of the proposition that no Indian tribal land may be sold or conveyed by anyone without the consent of the United States.

4. The Trade and Intercourse Act of the United States, 25 USC 177 applies to all Indian tribes and no Indian lands

may be conveyed without the consent of the United States. Passamaquoddy Tribe vs. Morton, (1975 DC ME) 388 F. Supp 649, aff'd (1975, CA1 Me) 528 Fed2d 370

5. In Golden Hill Paugussett Tribe of Indians vs Weicker, (1993, DC Conn) 839 F Supp 130 the court dismissed, without prejudice, a suit brought by the tribe to recover land conveyed by the State of Connecticut without federal permission because the tribe was not federally recognized. Bay Mills Indian Community is a federally recognized Indian Tribe and, but for the ruling of the Michigan Courts, should be able to maintain an action under the Trade and Intercourse Act for return of Indian tribally owned land conveyed by the State of Michigan without federal permission.

In granting Summary Disposition of Plaintiff's federal law claims, the Court of Claims impliedly held that the Plaintiff has no common law right of action for the recovery of its land or for money damages. The Court of Claims is incorrect. The federal courts recognize such a right of action. Oneida County New York vs Oneida Indian Nation, (US NY 1985) 105 S. Ct 1245, 470 US 226, 84 L Ed.2d 169. rehearing den. 105 S. Ct 2173, 471 US 1062, 85 L. Ed. 2d 491.

While a State court has made the decision on this first impression issue, to wit: land purchased by tribes in fee are subject to federal restrictions on alienation. Jicarilla Apache Tribe vs Board of County Comm, N.M. App1998, 862 P2d428, 116 NM 320 cert granted 873 P2d 270, 117 NM 524, cert den 865 P2d 1197, 116 NM 553 reversed 883 P2d 136, 118 NM 550 the Supreme Court of the United States has not decided the question. See Note 5, Cass County vs Leach Lake Band of Chippewa Indians, 524 US 103, 118 S. Ct.

1904, 141 L. Ed2d 90 (1998) where this Court specifically states that its decision does not apply to the facts in the instant case.

4. The Michigan Appellate Courts have incorrectly held that plaintiff's claims of denial of due process of law and denial of equal protection of the laws could only be brought under 42 USC 1983 which does not apply to states.

The tribal property, subject of this action, was not taxed for a while in the 1850s and 1860s, but was taxed for some years in the late 1870s and early 1880s and placed on the non-resident tax role. (Non residents received no actual notice of sale or taxes due, or delinquency. This procedure is claimed by the Plaintiff to be unconstitutional for it denies federal due process of law.)

The Indians in the 1850s-1880s and beyond were not sophisticated in the ways of the white man. They were impoverished, and their property was sold by the State of Michigan for the non payment of taxes, in this case in a series of deeds in 1884 and 1885.

Bay Mills Indian Community became the successor to the original tribes when they joined Bay Mills. This claim was brought against the State of Michigan in the Court of Claims for the wrongful taking of Indian tribal lands. This issue deals with only two counts of Plaintiff's multi-count Complaint, one alleging violation of Due Process and the other violation of the Equal Protection of the Law, both under the United States Constitution.

In its order granting the Defendant's Summary Disposition, the Michigan Court of Claims held that in order for the Plaintiff to bring a claim of violation of Federal Due Process or Equal Protection, it must do so under 42 USC 1983 and that statute was the only cause of action available to the Plaintiff. The Court of Claims further held that the Plaintiff could not maintain a 42 USC 1983 cause of action against the State of Michigan because the State was not a "person" within that statute. Plaintiff maintains that there is a direct action against the State of Michigan based upon the United States Constitution. Strader vs Troy, (CA 4 N.C.) 1978, 571 F2d 1263. If the Court of Claims and the Court of Appeals are correct, the State of Michigan and for that matter, all of the other states can thumb their nose at the federal Constitution and regularly deprive their citizens of federal due process and federal equal protection and there is nothing that anyone can do about it. The only available remedy would be under 42 USC 1983 a remedy not available against the State of Michigan.

Both the Due Process and Equal protection clauses have their origin in the Bill of Rights which was intended by the founders to act as a limitation on the power of government. Nashville C&S, L Railway vs. Waters, 294 US 405, 79 L. Ed. 949, 55 S. Ct. 486 (1935); Nebbia vs. New York, 291 US 502, 78 L. Ed. 940, 54 S. Ct. 505, 89 ALR 1469 (1934); Eubank vs. Richmond, 226 US 137, 57 L. ED. 156, 33 S. Ct. 79; Hodgson vs. Vermont, 168 US 262, 42 L. Ed. 461, 18 S. Ct. 80 (1897). Restraints upon the actions of the States. Brown vs. New Jersey, 175 US 172, 44 L. ED. 119, 20 S. Ct. 77 (1899). See also: Annotation: 56 ALR2d 895 Sect. 1, et. seq.

The Michigan courts seem to ignore the fact that the Supreme Court of the United States has held that there are,

indeed, direct causes of action based upon Constitutional violations unless congress has provided an alternative remedy which can substitute as a means of recovery directly under the Constitution and viewed as equally effective as a direct Constitutional claim. Carlson vs. Green, 100 S. Ct. 1468 at 1471,446 US 14, 64 L. Ed.2d 15 (1980) Quoted with approval: Wilkie vs. State of Arizona, 161 Ariz 541,779 P2d 1200 (1989).

The Supreme Court of the United States has sanctioned direct constitutional claims in limited situations, Bivens vs Six Unidentified Narcotics Agents, 403 US 388, 91 S. Ct. 1999, 29 L. Ed. 2d 619 (1971); Davis vs. Passman, 442 US 228,99 S. Ct. 2264. 60 L. Ed. 2d 846 (1979); and Carlson vs. Green, 446 US 14, 100 S. Ct. 1468, 64 L. Ed.2d 15 (1980). This instant case presents a fact situation which demands inclusion in that group of cases allowing a direct Constitutional claim against the State, especially since it is brought in a Court set up by the State Legislature to hear such claims.

Quite contrary to the opinion of the Michigan Court of Claims and the Michigan Court of Appeals in this case, 42 USC 1983 is not the only way in which an action for a constitutional violation can be brought. A claim can be made directly from the Constitution when, for whatever reason ,42 USC 1983 is not available. Verdon vs. Consolidated Rail Corp, (SD N.Y. 1993) 828 F. Supp. 1129; Three Rivers Cablevision Inc. vs City of Pittsburgh, (DC. PA. 1980) 502 F. Supp. 1118.

42 U.S.C. 1983 is not available to the plaintiff because the State of Michigan cannot be sued under that section and further because Plaintiff's cause of action rests on facts which had their origin in 1884-1885 long predating the statute.

The 11th Amendment to the Constitution of the United

States prevents the State of Michigan being sued in the federal courts. This problem is avoided entirely by bringing this action in a State court, especially a State Court set up to hear claims against the State.

It can be argued that the Eleventh Amendment is a bar against a direct Constitutional claim being made in a federal court against a State, but there would be no bar if the action, based on a direct Constitutional claim, were brought in a state court, especially one set up by the state for bringing claims against it, such as the Michigan Court of Claims. Idaho et. al. vs Cour d'Alene Tribe, 521 US 261, 117 S. Ct. 2028, 138 L. Ed. 2d 438 (1997).

In this instant case, the Plaintiff Appellant, Bay Mills Indian Community, lost its lands by direct and wrongful actions of the State of Michigan in taxing and selling Indian Tribal lands. The taxing statute under which all of this was done is constitutionally infirm for failure to provide any notice of taxes due, taxes delinquent, tax sale, or to provide a method for redemption. The wrongful taking of this property by the State of Michigan, violates federal due process requirements. Because the State of Michigan treated other Indian Tribes much differently under very similar circumstances, equal protection also has been denied. Recognized federal causes of action, should have been allowed to go forward in the Michigan Court of Claims.

Certiorari jurisdiction is warranted to correct the errors presented and to clarify the federal law.

CONCLUSION

The petition for Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX A

Michigan Supreme Court
Lansing, Michigan

SC: 118795
COA: 218580
Court of Claims: 96-016482-CM

Entered: October 18, 2001

BAY MILLS INDIAN COMMUNITY,
Plaintiff-Appellant,

v

STATE OF MICHIGAN,
STATE BOARD OF AGRICULTURE,
BOARD OF TRUSTEES OF MICHIGAN
STATE UNIVERSITY, JOHN ENGLER,
GOVERNOR
Defendants-Appellees.

Maura D. Corrigan, Chief Justice

Michael F. Cavanagh, Elizabeth A. Weaver, Marilyn Kelly
Clifford W. Taylor, Robert P. Young, Jr., Stephen J.
Markman, Justices

ORDER

On order of the Court, the application for leave to appeal from the March 2, 2001 decision of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

Cavanagh, J., would grant leave to appeal.

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

October 18, 2001 /s/
Corbin R. Davis, Clerk

APPENDIX B

COURT OF APPEALS OF MICHIGAN

No. 218580

March 2, 2001, Decided

BAY MILLS INDIAN COMMUNITY, *Plaintiff-Appellant*,	)
v.	)
	)
STATE OF MICHIGAN, STATE BOARD OF AGRICULTURE, GOVERNOR OF MICHIGAN, and MICHIGAN STATE UNIVERSITY BOARD OF TRUSTEES, *Defendants-Appellees*.	)

On Appeal From
Court of Claims
LC No. 96-016482-CM

JUDGES

O'Connell, P.J., and Zahra and B. B. MacKenzie *, JJ.

* Circuit judge, sitting on the Court of Appeals by assignment.

OPINION

B. B. MacKENZIE, J.

Plaintiff appeals as of right from orders granting summary disposition to defendants. As relevant to this appeal, plaintiff alleged that the state of Michigan and the Governor and his predecessors (defendants) wrongfully allowed plaintiff's predecessors' real property to be sold at tax sale in violation of the laws of the United States and the Due Process and Equal Protection Clauses of the United States and Michigan Constitutions. We affirm.

Factual background

In 1855, the United States entered into a treaty with plaintiff's predecessors, reserving certain land for them in Chippewa County. On June 16, 1856, before Congress ratified the treaty and before the land in this dispute could be withdrawn, the federal government issued land patents for the property to a non-Indian individual, Boziel Paul. These patents moved the land from the public domain to fee simple absolute private ownership.

On October 12, 1857, Boziel Paul and his wife deeded the property to Kinsley S. Bingham, then Governor of Michigan, to be held in trust for the use and benefit of plaintiff's predecessors, two bands of Ottawa and Chippewa Indians. The land was subsequently subjected to real property taxes, and the taxes went unpaid. In 1884 and 1885, Chippewa County brought suit for nonpayment of taxes. The auditor general then deeded the land to the third parties who had purchased the property at the tax sales.

Over one hundred years later, on November 6, 1996, plaintiff, the successor of those Indians for whom the land was to be held in trust, brought an action in the Court of Claims, seeking monetary damages for the loss of enjoyment, use, rents, and profits of the land. The Court of Claims essentially concluded that the land was taxable, that its transfer at tax sale was proper, and that neither plaintiff nor its predecessors had been wrongfully deprived of the property and, accordingly, granted summary disposition for defendants. This appeal followed.

Taxability of the subject land

Plaintiff first contends that the Court of Claims erred in concluding that the 1857 conveyance of the subject land from Boziel Paul to the Governor did not operate to make the land exempt from taxation. In reaching this conclusion, the court relied on *Cass Co, Minnesota v Leech Lake Band of Chippewa Indians,* 524 U.S. 103; 118 S. Ct. 1904; 141 L. Ed. 2d 90 (1998). In *Cass Co*, the United States Supreme Court held that where Congress makes reservation lands freely alienable to Indians or non-Indians, it manifests an unmistakably clear intent that the land is taxable by state and local governments. *Id.* at 106. In the present case, the Court of Claims acknowledged that, unlike *Cass Co,* the land in question was not reservation land, but applying the reasoning of that case, the court concluded that because the land was originally conveyed in fee by the federal government to a non-Indian, Boziel Paul, the federal government intended it to be alienable and, hence, taxable. We agree with the Court of Claims.

Where federal land is sold to a private person, it

becomes part of the general mass of property in the state and is subject to ad valorem property taxation. *Oklahoma Tax Comm v Texas Co*, 336 U.S. 342, 353; 69 S. Ct. 561; 93 L. Ed. 721 (1949). Thus, the land in this case ceased to be federal land and was subject to taxation when the unrestricted patent was issued to Boziel Paul in 1856. Furthermore, we are satisfied that *Cass Co, supra,* compels the conclusion that the land remained subject to taxation when Paul deeded it in trust to the Governor in 1857. In *Cass Co,* the Court addressed the question whether state and local governments could tax reservation land after it was made freely alienable, sold to non-Indians, and subsequently reacquired by tribal members. Citing *Goudy v Meath,* 203 U.S. 146; 27 S. Ct. 48; 51 L. Ed. 130 (1906), and *Co of Yakima v Confederated Tribes and Bands of the Yakima Indian Nation*, 502 U.S. 251; 112 S. Ct. 683; 116 L. Ed. 2d 687 (1992), the Court indicated that when Congress makes reservation lands fully alienable, the land is taxable unless a contrary intent is clearly manifested. 524 U.S. at 113. In *Cass Co,* the Court concluded that once the taxability of the land was established, the land could not become tax exempt once again absent an unmistakably clear statement of Congress, even if the land is reconveyed to a tribal member. *Id.* Importantly, it was the federal act of patenting the land in fee, thus making it fully alienable, that made the land in *Cass Co* taxable.

Although the land at issue in this case was not originally reservation land, as had been the land in *Cass Co,* we do not find that distinction dispositive. Both here and in *Cass Co*, the land enjoyed federal protection status until transferred without restriction by the federal government to a private party. Upon that transfer, the land was removed from federal control and became subject to the state's taxing

authority unless and until Congress manifested a contrary intent. Consistent with *Cass Co,* in the absence of any federal intent to once again impose a protected status on the land in this case after it was patented to Boziel Paul, the property continued to remain subject to the state's taxing authority, even when it was transferred to the Governor in trust for tribal members.

We are aware that the Sixth Circuit Court of Appeals decision in *United States on Behalf of Saginaw Chippewa Tribe v Michigan*, 106 F.3d 130 (CA 6, 1997), cert granted and judgment vacated by *Michigan v United States*, 524 U.S. 923; 118 S. Ct. 2316; 141 L. Ed. 2d 692 (1998), may appear to conflict with this opinion. However, that decision was vacated and remanded for further consideration in light of *Cass Co.* Furthermore, the decision in that case was based on the taxation of land that had originally been allotted by treaty to individual Indian owners, later conveyed to persons who were not tribal members, and then repurchased by members of the tribe. *Id.* at 132. Here, the land at issue was originally patented to a person who was not a tribal member, Boziel Paul, in fee simple absolute. Under *Cass Co,* these lands, once patented, were taxable by the state and local governments.

The Trade and Intercourse Act

Plaintiff argues that under the Indian trade and intercourse act, 25 USC 177, which prohibits the conveyance of tribal lands under certain circumstances, the state could not convey the subject land at tax sale without federal approval. The Court of Claims rejected this argument, concluding that the Indian trade and intercourse act applies only to voluntary

conveyances by the tribes themselves and not to involuntary conveyances by the state for nonpayment of taxes. We agree.

The Indian trade and intercourse act, sometimes referred to as the Nonintercourse Act, was first passed in 1790 and has not changed materially since that time. *Lummi Indian Tribe v Whatcom Co, Washington,* 5 F.3d 1355, 1358 (CA 9, 1993). The act now provides in pertinent part:

> No purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution.

The purpose of this provision "is to prevent unfair, improvident or improper disposition by Indians of lands owned or possessed by them to other parties, except the United States, without the consent of Congress . . . ." *Federal Power Comm v Tuscarora Indian Nation*, 362 U.S. 99, 119; 80 S. Ct. 543; 4 L. Ed. 2d 584 (1960).

To establish a prima facie case of a violation of the act, a plaintiff must prove that: (1) the plaintiff is or represents an Indian tribe within the meaning of the act, (2) the land at issue is covered by the Indian trade and intercourse act as tribal land, (3) the United States has never approved or consented to the alienation of the tribal land, and (4) a trust relationship between the United States and the tribe, established by coverage under the Indian trade and intercourse act, has never been terminated or abandoned. *Catawba*

Indian Tribe of South Carolina v South Carolina, 718 F.2d 1291, 1295 (CA 4, 1983), rev'd on other grounds 476 U.S. 498; 106 S. Ct. 2039; 90 L. Ed. 2d 490 (1986). Here, assuming that the property was tribal land in the hands of the Governor, plaintiff has failed to establish the third and fourth elements. By fee patents to Boziel Paul, the federal government relinquished all interest it had in the disputed land. The land was subsequently subject to taxation and alienation by virtue of Paul's ownership in fee simple absolute. Furthermore, under the fourth element, this alienation by the federal government terminated any trust relationship involving the United States with respect to the land. In short, the United States relinquished all interest in the land before its transfer to the Governor.

As previously discussed, once the United States removed the restraint on alienation of the land by patenting it in fee simple to Boziel Paul, the property was subject to taxation. Nothing in the Indian trade and intercourse act suggests that its protections precluded taxation or that it acted to revive the federal government's interest in the property sufficiently to require its consent for transfer by tax sale. Furthermore, "courts have said that once Congress removes restraints on alienation of land, the protections of the Nonintercourse Act no longer apply." *Lummi, supra,* at 1359. See also *Anderson & Middleton Lumber Co v Quinault Indian Nation,* 130 Wn.2d 862, 877-878; 929 P.2d 379 (1996). We therefore conclude that the Governor's acquisition of the land in trust for plaintiff's predecessors did not trigger the protections of the act and that the state's transfer of the property at tax sale did not violate the act. The Court of Claims properly granted defendants' motion for summary disposition on this issue.

The federal constitutional claims

Plaintiff next contends that the Court of Claims erred in granting summary disposition of plaintiff's federal constitutional claims pursuant to MCR 2.116(C)(8). The court concluded that there was no case law to support claims for damages under the Due Process Clause or the Equal Protection Clause when the claims were brought against the state and the Governor acting in his official capacity. We find no error.

The Court of Claims has exclusive jurisdiction to hear claims against the state and any of its instrumentalities for money damages. *Carlton v Dep't of Corrections*, 215 Mich. App. 490, 501; 546 N.W.2d 671 (1996). This jurisdiction also extends to suits for injunctive and declaratory relief against state officers where the officer was acting in an official capacity when committing the acts complained of. *Id.* Private individuals, however, have no state court remedy against the state or state officials acting in an official capacity for damages arising out of alleged violations of the federal constitution. 215 Mich. App. at 502-503.

Here, plaintiff's action sought money damages for the constitutional violations of previous governors and the present Governor, each acting in his official capacity. As the Court of Claims properly pointed out, plaintiff's due process and equal protection claims were in essence a 42 USC 1983 cause of action. However, a § 1983 action for monetary damages for alleged federal constitutional violations may not be brought in state courts against the state or a state official sued in an official capacity. *Will v Dep't of State Police,* 491 U.S. 58; 109 S. Ct. 2304; 105 L. Ed. 2d 45 (1989). Nor may a

plaintiff bring such an action by simply giving it another name. *Carlton*, 215 Mich. App. at 502-503. Furthermore, because plaintiff sought a monetary award, the suit did not fall within the exception set forth in *Ex Parte Young*, 209 U.S. 123; 28 S. Ct. 441; 52 L. Ed. 714 (1908), which allows certain suits against state officers for injunctive or declaratory relief. Accordingly, we find no error in the dismissal of plaintiff's federal constitutional claims.

The statute of limitations

The Court of Claims granted summary disposition of all remaining noncontinuing state law claims on the ground that they were time-barred. MCR 2.116(C)(7). Again, we find no error.

Plaintiff acknowledges that its claims accrued in 1884 and 1885, when the subject property was sold at tax sale, and suggests that there was no applicable statute of limitations in effect at that time. Noting that, generally, the statute of limitations in force at the time of the accrual of a cause of action is the statute applied to a claim, and stating that there was no applicable statute of limitations in 1884 and 1885, plaintiff reasons that there was no limitation period in which plaintiff was required to bring this action. The flaw in this argument is that a general six-year limitation period was in effect at the time plaintiff's claim accrued. How Stat 1882, § 8713(7).

Moreover, plaintiff's predecessors were under no disability that would preclude the running of the limitation period. 1841 PA 54, § 1 specifically provided that "any Indian shall be capable of suing and being sued in any of the

courts of justice of this state, and shall be entitled to all the judicial rights and privileges of any other inhabitants thereof." Similar provisions have been in effect from 1841 to the present. MCL 600.2011; MSA 27A.2011. Even in the absence of this provision, plaintiff's 1937 reorganization under the Indian Reorganization Act of 1934, 25 USC 461 et seq., expressly adopted a provision allowing it to sue or be sued in state courts. Thus, even if plaintiff or its predecessors were under disability to sue, the disability was removed, at the latest, in 1937, and plaintiff's 1996 state claims were therefore time-barred.

Further, even if plaintiff were under disability until 1937, plaintiff's claims are barred under any potentially applicable statute of limitations. Subsection 6452(1) of the Court of Claims Act, MCL 600.6452(1); MSA 27A.6452(1), states that a claim against the state brought in the Court of Claims expires unless it is filed three years after it accrues. To the extent that plaintiff's claims are based on entitlement to the subject land, the claim accrued when plaintiff's predecessors were disseised of the property, MCL 600.5829(1); MSA 27A.5829(1); plaintiff's complaint alleged that its predecessors were dispossessed of the property in 1884 and 1885. Subsection 73 of the General Property Tax Act, MCL 211.73; MSA 7.118, provides, 1893 PA 206, § 73, that an action to set aside a tax sale must be brought within five years after the date of purchase or deed at tax sale. Actions to recover for injuries to persons or property must be brought within three years after the claim accrues, MCL 600.5805(8); MSA 27A.5805(8), and this period has applied since 1915. See 1915 CL 12323(2). Finally, the general limitation period that applies to all actions without a specific period of limitation was and remains six years. MCL

600.5813; MSA 27A.5813.

With regard to plaintiff's claim that the Governor as trustee breached his fiduciary duty, it is unclear whether the Court of Claims considered the claim to be a continuing state law claim--and thus not subject to a statute of limitations defense--or a noncontinuing claim to which the defense applies. We conclude that the alleged breach of fiduciary duty at issue in this case was not continuing in nature. A claim of breach of fiduciary duty or breach of trust accrues when the beneficiary knew or should have known of the breach. *Baks v Moroun*, 227 Mich. App. 472, 493-494; 576 N.W.2d 413 (1998). Stated otherwise, the period of limitation begins to run when the fiduciary relationship ends; that is, when all the fiduciary's duties have been discharged or repudiated. *Carpenter v Mumby*, 86 Mich. App. 739, 750-751; 273 N.W.2d 605 (1978). Here, if the Governor breached his trust duties as plaintiff claims, the breach occurred when the Governor failed to protect the property from tax sale or to timely redeem the property. In light of the public nature of the tax sale, plaintiff's predecessors should have been on notice of any breach of duty or repudiation of the fiduciary relationship in 1884 and 1885. Plaintiff's breach of fiduciary duty claim was therefore not timely filed.

In light of our conclusion that plaintiff's state law claims were time-barred, we need not reach the question whether the Court of Claims erred in dismissing plaintiff's breach of fiduciary duty and state constitutional claims on the merits.

Affirmed.

/s/ Barbara B. MacKenzie
/s/ Peter D. O'Connell
/s/ Brian K. Zahra

APPENDIX C

STATE OF MICHIGAN
IN THE COURT OF APPEALS

COA NO._____
Court of Claims No. 96-16482

BAY MILLS INDIAN COMMUNITY,
Plaintiff Appellants

vs.

STATE OF MICHIGAN, STATE BOARD OF AGRICULTURE, BOARD OF TRUSTEES OF MICHIGAN STATE UNIVERSITY, JOHN ENGLER, GOVERNOR
Defendant Appellees

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CLAIM OF APPEAL

Now comes Bay Mills Indian Community, by its attorneys, Peninsula Legal Services, P. C., and does hereby claim an appeal to the Michigan Court of Appeals from the following orders of the Michigan Court of Claims:

1. Order of Judge Lawrence Glazer of the Michigan Court of Claims granting Partial Summary Disposition of Plaintiff's Breach of Fiduciary claims against the Defendants, entered on March 10th, 1999 which is the final order in this case resolving all of the disputes between the parties and closing the case.

2. Order of Judge Lawrence Glazer of the Michigan Court of Claims granting to the Defendants Partial Summary Disposition of the Plaintiff's state law claims other than trespass, entered on December 19, 1997

3. Order of Judge Lawrence Glazer of the Michigan Court of Claims granting to the Defendants partial Summary Disposition of Plaintiff's Claims based upon the Constitution of the United States, entered on November 19, 1997.

4. Opinion and Order of Judge Lawrence Glazer granting to the Defendants Partial Summary Disposition of Plaintiff's claims for wrongful taxation and Plaintiff's claims under the Trade and Intercourse Act of the United States, 25 USC 177, entered on January 29, 1999.

Copies of the above orders are attached hereto.

Peninsula Legal Services, P.C.
BY:
/s/_____
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STATE OF MICHIGAN

IN THE COURT OF CLAIMS

Bay Mills Community 98-16482-CM

v.

State of Michigan, et al.

Opinion and Order

Defendant State of Michigan moves for Summary Disposition [C(10)] on Plaintiff's claim of wrongful taxation and violation of the Federal Non-intercourse Act.

The original patentee (i.e., grantee of this land from the federal government), one Boziel Paul, purported to convey the subject land to the Governor of the State of Michigan in trust for two bands of Ottawa and Chippewa Indians in 1857. Thereafter, the land was subjected to State taxation, the taxes were not paid and the land was then sold for non-payment of taxes.

Plaintiffs assert that this violated their rights under federal law, and that the State could neither tax this land nor seize it for non-payment of State or local taxes.

Resolution of this motion depends upon the proper interpretation of the U.S. Supreme Court holding in Leech Lake (19), 118 S Ct 1904. Plaintiffs argue that it must be construed very narrowly, to the effect that Congress had manifested an intent that certain Indian lands are taxable by

the States through enactment of the Nelson and Burke Acts; that without this clear manifestation, the States could not tax these lands.

The Court has read that opinion, and Plaintiffs' description of it is simply incorrect.

The case deals with State taxability of reservation lands. At 1908 the Court holds:

> "State and local governments may not tax Indian reservation land 'absent cessation of jurisdiction or other federal statutes permitting it'"
>
> "We have determined that Congress has manifested such an intent when it has authorized reservation lands to be allotted in fee to individual Indians, thus making the lands freely alienable and withdrawing them from federal protection."

(At 1910:) Yakima, like Goudy, stands for the proposition that when Congress makes reservation lands freely alienable, it is 'unmistakably clear' that Congress intends that land to be taxable by State and local governments..."

[Goudy and Yakima]... establish that Congress clearly intended reservation lands conveyed to Indians to be subject to taxation; hence Congress surely intended reservation lands conveyed to non-Indians also to be taxable." [emphasis in original]

In the present case we are dealing with non-reservation lands conveyed by the federal government to non-Indians. These lands were later conveyed by the patentee to the Governor in trust for several bands of Indians. But Leech Lake makes unmistakably clear that this last conveyance could not and did not operate to exempt these lands from taxation by the State of Michigan.

The Non-intercourse Act is not a "clear manifestation to the contrary". It simply prohibits the sale of Indian-owned land without federal consent. It is clearly addressed to voluntary alienations of Indian-owned land, not tax sales of land purportedly held in trust for Indians.

Moreover, the federal Indian Reorganization Act of 1934 sets out procedures for Indian-owned land (either tribal or individual) to become exempt from local taxation. Clearly, the Congress would not have done this if it presumed that all Indian-owned land was exempt from local taxation.

Thus Defendant's motion must be, and is, granted.

The parties have stipulated on the record that if the present motion is granted, this would also dispose of Plaintiffs' sole remaining other claim, that of trespass against Michigan State University. Therefore, this is a final order of dismissal.

dated: 01-29-99

/s/
Lawrence M. Glazer
Judge, Court of Claims

PROOF OF MAILING: I certify that the foregoing Opinion and Order was mailed by first class upon counsel of record on the 29th day of January 1999.

/s/_____

Claim of Appeal - 01/29/99

STATE OF MICHIGAN
IN THE COURT OF CLAIMS

File No. 96-16482-CM

HON. LAWRENCE M. GLAZER

BAY MILLS INDIAN COMMUNITY,
Plaintiff,

v

STATE OF MICHIGAN, STATE BOARD OF AGRICULTURE, BOARD OF TRUSTEES MICHIGAN STATE UNIVERSITY, JOHN ENGLER, GOVERNOR,
Defendants.

ORDER GRANTING DEFENDANTS' MOTION FOR PARTIAL SUMMARY DISPOSITION

At a session of said Court held in the Court of Claims, City of Lansing, Michigan on December 19, 1997

PRESENT:HON. LAWRENCE M. GLAZER
Circuit Judge

This matter was called on for hearing on December 3, 1997, at 2:30 p.m. on Defendants' Motion for Partial Summary Disposition seeking dismissal of all Plaintiff's state law claims except the trespass alleged in Count Five of Plaintiff's Complaint. The Court, having reviewed the briefs

of the parties and having heard oral argument, rendered its opinion from the bench. In accordance with said opinion, and for the reasons therein stated, this Court enters the following Order:

IT IS HEREBY ORDERED that Defendants' Motion for Partial Summary Disposition seeking dismissal of Plaintiff's state law claims with the exception of the trespass alleged at Count Five of Plaintiff's Complaint is **HEREBY GRANTED.**

IT IS FURTHER ORDERED that all of Plaintiff's state law claims with the exception of the trespass alleged at Count Five of Plaintiffs Complaint are hereby **DISMISSED.**

IT IS SO ORDERED.

/s/ LAWRENCE M. GLAZER
Honorable Lawrence M. Glazer
Circuit Court Judge

Order prepared by: Daniel M. Greenberg (P28843)
Assistant Attorney General

9654434/Pleadings/Order2

STATE OF MICHIGAN
IN THE COURT OF CLAIMS

File No. 96-16482-CM
HON. LAWRENCE M. GLAZER

BAY MILLS INDIAN COMMUNITY,
Plaintiff,

v

STATE OF MICHIGAN, STATE BOARD OF AGRICULTURE, BOARD OF TRUSTEES MICHIGAN STATE UNIVERSITY, JOHN ENGLER, GOVERNOR,
Defendants.

ORDER GRANTING DEFENDANTS' MOTION FOR PARTIAL SUMMARY DISPOSITION

At a session of said Court held in the Court of Claims, City of Lansing, Michigan on November 19, 1997.

PRESENT:HON. LAWRENCE M. GLAZER
Circuit Judge

This matter was called on for hearing on October 29, 1997, at 1:30 p.m. on Defendants' Motion for Partial Summary Disposition seeking dismissal of Plaintiff's claims predicated on violation of the due process and equal protection provisions of the United States Constitution. The

Court, having reviewed the briefs of the parties and having heard oral argument, rendered its opinion from the bench. In accordance with said opinion, and for the reasons therein stated, this Court enters the following Order:

IT IS HEREBY ORDERED that Defendants' Motion for Partial Summary Disposition seeking dismissal of Plaintiff's claims predicated on violation of the due process and equal protection clauses of the United States Constitution is **HEREBY GRANTED**.

IT IS FURTHER ORDERED that Counts Two and Three of Plaintiff's Complaint are hereby **DISMISSED**.

IT IS SO ORDERED.

/s/
Honorable Lawrence M. Glazer
Circuit Court Judge

Order prepared by: Daniel M. Greenberg (P28843)
Assistant Attorney General

Approved as to Form:
/s/
Robert H. Golden
Attorney for Plaintiff

/s/
Sally Harwood
Attorney for Defendant Board of
Trustees for Michigan State University

/s/_____
Daniel M. Greenberg
Attorney for Defendants State of Michigan
and Governor Engler

Claim of Appeal - 01/29/99

STATE OF MICHIGAN
IN THE COURT OF CLAIMS

File No. 96-16482-CM
HON. LAWRENCE M. GLAZER

BAY MILLS INDIAN COMMUNITY,
Plaintiff,

v

STATE OF MICHIGAN, STATE BOARD OF AGRICULTURE, BOARD OF TRUSTEES MICHIGAN STATE UNIVERSITY, JOHN ENGLER, GOVERNOR,
Defendants.

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STIPULATION AND ORDER

Recitals:

As of January 1, 1999 Defendants State of Michigan and Governor Engler had the following two motions pending before this Court:

- "Defendants State of Michigan's and Governor Engler's Motion Pursuant to MCR 2.116(C)(10) Seeking Partial Summary Disposition of Plaintiff's Claim of Wrongful Taxation and Violation of the Nonintercourse Act." (Tax Motion)

- "Defendants State of Michigan's and Governors Engler's Motion for Partial Summary Disposition Under MCR 2.116(C)(8) Seeking Dismissal of Those Portions of Plaintiff's Complaint Alleging Defendants State of Michigan's or Governor Engler's Breach of Fiduciary Duty." (Trust Motion)

Oral argument on the Tax Motion was scheduled for January 13, 1999, and oral argument on the Trust Motion was scheduled for January 27, 1999.

On the morning of January 13, 1999, the Court advised the parties that the scheduled hearing on the Tax Motion would not take place due to illness.

By Notice dated January 19, 1999, the Court advised the parties of its willingness to decide the Tax Motion by written opinion and without oral argument if the parties so agreed by written stipulation. The parties so stipulated.

At the hearing on January 27, 1999, the Court heard oral argument on the Trust Motion. Following argument, the Court rendered its opinion from the bench. The Court determined that, in the absence of express constitutional or statutory authorization, the Governor lacked the authority to obligate successor governors or the State as a trustee and granted Defendants' Trust Motion. After the Court rendered its oral opinion the parties stipulated on the record that if the Court ruled in favor of the Defendants on both of the issues raised in the Tax Motion, that ruling would dispose of the sole remaining claim asserting trespass directed against Defendant Michigan State University.

On January 29, 1999, the Court issued its written Opinion and Order wherein it granted Defendants' Tax Motion and resolved both issues raised therein in favor of the Defendants. The last paragraph of this Opinion and Order states:

> The parties have stipulated on the record that if the present motion is granted, this would also dispose of Plaintiff's sole remaining other claim, that of trespass against Michigan State University. Therefore, this is a final order of dismissal.

While the Court had expressed its opinion on all of the issues in the case at the time it issued its written opinion on the Tax Motion on January 29, 1999, the Court had not been presented with, and had not entered, an order granting Defendants' Trust Motion. Accordingly, the January 29, 1999 Opinion and Order did not constitute "a final order of dismissal."

STIPULATION

In order to obtain an order of the Court which comports with its opinion on the Trust Motion, and to clarify that the order which is set forth following this stipulation is the order which resolves the last pending claim and closes the case, the parties, through their respective counsel, hereby stipulate to the entry of the following order:

ORDER

At a session of said Court held in the Circuit

Courtrooms, City of Lansing, County of Ingham, State of Michigan, on March 10, 1999.

PRESENT:
HONORABLE LAWRENCE M. GLAZER
Circuit Judge

IT IS HEREBY ORDERED AND ADJUDGED that Defendants' Motion for Partial Summary Disposition seeking dismissal of all of Plaintiff's claims predicated on a breach of fiduciary duty under a trust alleged to have been established under a deed from Boziel Paul and his wife, Mary Paul, to Governor Kinsley S. Bingham dated October 12, 1857, is HEREBY GRANTED.

IT IS HEREBY FURTHER ORDERED AND ADJUDGED that the Opinion and Order of this Court entered on January 29, 1999, shall be amended by deleting the last paragraph thereof and replacing it with the following paragraph:

> The parties have stipulated on the record that if the present motion is granted, this would also dispose of Plaintiff's claim of trespass against Michigan State University. In accordance with said stipulation, that claim is HEREBY DISMISSED.

IT IS SO ORDERED.

This Order resolves the last pending claim presented by this litigation and closes the case.

/s/
Honorable Lawrence M. Glazer
Circuit Court Judge

Approved as to Form:

/s/
Robert H. Golden
Attorney for Plaintiff
Dated: February 24, 1999

/s/
Sally S. Harwood
Associate General Counsel for
Defendant Michigan State University
Dated: March 1, 1999

/s/
Daniel M. Greenberg
Assistant Attorney General
Attorney for Defendants State of
Michigan and John Engler,
Governor
Dated: March 3, 1999

APPENDIX D

STATE OF MICHIGAN

IN THE COURT OF CLAIMS

No. 96-16482-CM

BAY MILLS INDIAN COMMUNITY,
Plaintiff,

-vs-

STATE OF MICHIGAN,
STATE BOARD OF AGRICULTURE,
BOARD OF TRUSTEES OF
MICHIGAN STATE UNIVERSITY,
and JOHN ENGLER,
Governor and Successor Trustee,
Jointly and Severally,
Defendants,

Peninsula Legal Services, P.C.
Southeastern Michigan Offices
Prentiss M. Brown P 11296
Robert H. Golden P 14108
Armand D. Kunz P 16299
27465 Southfield Road
Lathrup Village, Michigan 48076
(810) 559-8118

COMPLAINT

Now Comes the above named plaintiff, Bay Mills Indian Community, by its attorneys, Peninsula Legal Services, P.C., and complains of the State of Michigan, State Board of Agriculture, Board of Trustees of Michigan State University, and Governor John Engler in his official capacity as Governor of the State of Michigan and says:

GENERAL JURISDICTIONAL AVERMENTS

1. That your plaintiff, Bay Mills Indian Community, is an Indian Tribe recognized by the United States and the State of Michigan located on its reservation in the county of Chippewa, State of Michigan.

2. That the defendants herein are the State of Michigan, State Board of Agriculture, Board of Trustees of Michigan State University and John Engler, Governor and Successor Trustee over which this court has jurisdiction in all claims for money damages; that your plaintiff seeks money damages against the defendant herein.

3. That the claims of the plaintiff involve ownership, use, occupancy, enjoyment, rents and profits of land hereinafter described in Count One of this complaint and incorporated herein by reference thereto, which land is located in the State of Michigan and in the County of Chippewa.

4. That plaintiff seeks damages for which it is justly entitled and believes that those damages are well in excess of $50,000 plus interest compounded annually from 1884 at the

statutory and/or judgment rate, whichever is higher.

5. That the plaintiff has filed a notice of intent to claim and notice of intent to file this action in the Michigan Court of Claims prior to filing this action

6. That the plaintiff will file, or has filed an action in the Circuit Court for equitable relief which should be consolidated with this action for it arises out of the same transaction and involves the same parties.

COUNT ONE

1. That your plaintiff brings this action as an Indian Tribe in existence in 1884 and which, at that time, and now, is the successor of the two bands of Indians of Sault Ste. Marie of which O Shaw Wan No and Shaw Wan were chiefs in 1857, prior thereto and thereafteer until succeeded by the plaintiff herein.

2. That on or about October 12, 1857, upon information and belief, for the purposes of safeguarding and protecting legal title from being lost, and in order to create a restraint on alienation of the land in question, Boziel Paul and Mary Paul, his wife, conveyed real property located in the County of Chippewa and the State of Michigan and more particularly described as follows:

> "Lots number two (2), three (3), and four (4) of Section Seven (7) in Township Forty-Five (45) North of Range Two (2) East, containing One Hundred Thirty acres, more or less, and Lots numbered one (1) in Section Seven (7)

> containing 55.20 acres, more or less, and lot numbered One (l) in Section Eighteen (l8) in the Township and Range as aforesaid containing 49.60 acres, more or less, situate in the United States District if Lands formerly subject to sale at Sault Ste. Marie, Michigan and now subject to sale at Marquette, Michigan."

to Kinsley S. Bingham, Governor of the State of Michigan, in his official capacity, and to his successors in office, in their official capacity, nevertheless in trust for the use and benefit of the two bands of Indians of Sault Ste. Made of which O Shaw Wan No and Shaw Wan were chiefs.

3. That the trust thereby created placed in the State of Michigan and its Governor in Office, and his successors, the obligation and duty of safeguarding the title to the aforesaid property so that the Indian Bands and their successors who were beneficiary of the trust thereby created could and would enjoy the use and occupancy and rents and profits of said lands, in an era when Indian Bands were not skilled in the ways of the white man, generally could not read or write the white man's language, and were prey for many schemes and methods of separating them from their lands, and in order to create a restraint on the alienation of the said lands so that the Indian Bands could not be parted from their lands without the approval and conveyance of the Governor of the State of Michigan then in office; such trust arrangement used in the State of Michigan frequently, and mimicking the federal arrangement for the safeguard of Indian property.

4. That thereafter the County of Chippewa, a

subdivision of the State of Michigan, began to tax the aforesaid land contrary to the then existing law of the United States and of the State of Michigan to the effect that Indian land in the name of a tribe and upon which there was a restraint on alienation could not be taxed, upon information and belief, sending their tax bills to the Governor of the State of Michigan, holder of legal title on the books and records of the county.

5. That, upon information and belief, the Governor of the State of Michigan, upon receipt of the aforesaid tax bills did nothing, failing to forward the tax bills to your plaintiff or its predecessors explaining the significance hereof, and failing to pay the taxes and/or cause the taxes to be abated and further failing to call to the attention of the County of Chippewa that such lands should not be taxed.

6. That, upon information and belief, the County of Chippewa sent out notices of non payment of taxes and notices of delinquency in the payment of taxes which notices went to the Governor of the State of Michigan as legal title holder on the books and records of the County, and again the Governor then in office, upon information and belief, failed to do anything about such notices and/or delinquencies, and failed to forward the notices to the Plaintiff or its predecessors, and failed to pay the taxes or cause an abatement thereof.

7. That when a suit was instituted in the Circuit Court for the County if Chippewa, consistent with the procedure for the sale of taxes, upon information and belief, the then Governor of the State of Michigan in office, received notices from such court and received process from said court and

failed to respond thereto or to forward such notices and/or process to the plaintiff or its predecessors, allowing the sale of taxes to be made upon the aforesaid property without the same being contested or called to the attention of the beneficial owners thereof, plaintiff herein and/or its predecessors.

8. That upon information and belief once sale of taxes was completed and the right of redemption from such sale commenced, any notices from the Court, from the County or its officials, were sent to the legal title holder on the books and records of the County of Chippewa, the Governor of the State of Michigan then in office, who disregarded said notices and failed to inform the plaintiff or its predecessors thereof.

9. That on or about the Fifth day of May, 1884, the State of Michigan by its Auditor General, without any notice to your plaintiff, did convey a portion of the aforesaid property, to wit: Lot one (1) of Section Eighteen (18) in Town Forty - Five (45) North, Range Two (2) East containing forty nine and 60/100ths (49.60) acres, to a third party thus transferring title to said property to others and depriving your plaintiff and its predecessors from the use, benefit, enjoyment and rents and profits of said land, which deprivation exists to this very day and is continuing.

10. That on or about August 12, 1884 the State of Michigan by its Auditor General did, without any notice to your plaintiff, convey a portion of the aforesaid property, to wit: Lot one (1), Section Eighteen (18), Town 45 North, Range Two (2) East, to a third party thus transferring title to said property to others and depriving the plaintiff and its predecessors from the use, benefit, enjoyment and rents and

profits of said land, which deprivation exists to this very day and is continuing.

11. That on or about September 6,1884, the State of Michigan, by its Auditor General did, without any notice to your plaintiff, convey a portion of the aforesaid property, to wit: Lots one (1), two (2), three (3), and four (4) of Section Seven (7), Town forty-five (45) Noah, Range Two (2) East, to third persons thus transferring title to said property to others and depriving the plaintiff and its predecessors of the use, benefit, enjoyment, rents and profits of said land, which deprivation exists and continues to this very day.

12. That on other numerous and diverse days, the State of Michigan, by its Auditor General did, without any notice to your Plaintiff, convey a portion of the aforesaid property of the plaintiff to third persons thus transferring title to all of the said property of the plaintiff to others and depriving the plaintiff and its predecessors of the use, benefit, enjoyment, rents and profits of said land, which deprivation exists and continues to this very day.

13. That the United States did not consent to the aforesaid conveyances and such conveyances were in violation of the laws of the United States and of the State of Michigan, for example and by way of illustration and not limitation:

A. Violation of the trade and Intercourse act of the United States.
B. Violation of the common law of the United States
C. Violation of the holding of the Supreme Court of the State of Michigan in the matter of Auditor General vs. Williams

14. That as a result of the wrongful acts of the State of Michigan and the Governor of the State of Michigan successor to Kinsley Bingham, including the named defendant, John Engler, your plaintiff has lost the use, benefit, enjoyment, rents and profits of the aforesaid property.

COUNT TWO

1. That your plaintiff incorporates, by reference thereto, all of the allegations of this complaint as though fully set out herein.

2. That the aforesaid conveyances by the State of Michigan took from your plaintiff its property as aforedescribed, without a hearing, without notice, contrary to law of the United States and of the State of Michigan and in violation of your plaintiff's rights to due process of law under the Constitution of the United States.

COUNT THREE

1. That your plaintiff incorporates, by reference thereto, all of the allegations of this complaint as though fully set out herein.

2. That the method of safeguarding the title to property, to be used and occupied by Indian tribes, employed as related herein, by placing land in the name of the Governor of the State of Michigan and his successors in office, was employed elsewhere in the State of Michigan and known to the Governor of the State of Michigan. The tribes of Indians involved in the specific trusts therein created were treated

differently by the State of Michigan than did the State of Michigan treat your Plaintiff. The Governor of the State of Michigan, in his official capacity, and his successors in office, in situations involving other Tribes or Bands of Indians involved in specific trusts did, by way of illustration and not of limitation:

A. Convey one or more such parcels held in trust by the Governor of the State of Michigan, at the request of the judicial branch of the State government, to an Indian Tribe or Band or its designee, but refusing and/or neglecting to do so to the plaintiff in regard to the subject property.

B. Cause, allow and/or participate in the granting to one such Indian tribe an abatement of taxes.

C. Cause, allow and/or participate in the designation of one such piece or parcel of real estate so held in trust as a state reservation, free of state taxation, but denying such status to your plaintiff during the period herein complained of.

3. That the State of Michigan did, thereby, deprive your plaintiff of equal protection of the law under the Constitution of the United States.

COUNT FOUR

1. That your plaintiff incorporates, by reference thereto, all of the allegations of this complaint as though fully set out herein.

2. That in 1857 when the conveyance from Boziel Paul and his wife to Kinsley S. Bingham Governor of the State of Michigan, as aforedescribed took place, the federal government had adopted a policy of overseer of the Indians, concerned with their well being and legislating a protective attitude toward them in which atmosphere, and subject to the policy of the area as stated in the Northwest Ordinance and later in the constitution of the State of Michigan, there existed a fiduciary relationship between the federal government and various tribes and bands of Indian Bands, which protective atmosphere created a common law right of action of the Indian Bands under federal law into which the Governor, in office, of the state of Michigan stepped by entering into and being a part of the trust relationship established by the aforesaid conveyance.

3. That the Governor and executive branch of government of the State of Michigan were put on notice of this trust transaction and thereby incurred a duty to act to preserve the trust corpus, the property aforedescribed, withdraw from the relationship, or convey the property to the trust beneficiaries so that they could enjoy a merger of the equitable and legal title to said property and thereby preserve their interest in said property, but the Governor and executive branch of government of this state did nothing thereby breaching their fiduciary duties under the federal common law, which breach continues to this day, causing your plaintiff the damages heretofore set forth in this complaint.

COUNT FIVE

1. That your plaintiff incorporates, by reference thereto, all of the allegations of this complaint as though fully

set out herein.

2. That the State of Michigan presently occupies a significant portion of the aforesaid property and has legal title to a significant portion of the aforesaid property which they acquired having full knowledge of their wrongdoing and that they did confiscate the plaintiff's property, aforedescribed, contrary to the law of the United States and of the State of Michigan, unjustly using the said property contrary to the rights of the plaintiff said property being more fully described as:

> Beginning at a point Two Hundred Ninety-Five (295) feet south of the One Quarter (1/4) corner between Sections Six (6) and Seven (7) Town Forty-Five (45) North, Range Two (2) East; thence South a distance of two thousand three hundred forty-five (2345) feet to the center of Section Seven (7) Town Forty-Five (45) North, Range Two (2) East; thence East a distance of seven hundred eighty-two (782) feet to the West right-of-way of the County Road; thence northerly along the right of way of said road to a point two hundred ninety-five (295) feet south of the North Line of Section Seven (7) Town Forty-Five (45) North Range Two (2) East; thence West to the point of beginning. Except so much thereof as has been conveyed to the Chippewa County Board of Road Commissioners for highway purposes.

And a second parcel described as:

> Part of Lots Three (3) and Four (4) Section Seven (7) Township Forty-Five (45) North, Range Two (2) East Beginning at a point One Hundred (100) feet due North of the South Quarter corner of Section Seven (7); Thence due North Two Thousand Five Hundred Forty (2540) feet to the Northwest corner of Lot Three (3); Thence due East Seven Hundred Forty (740) feet, more or less, to the County Road; Thence Southerly along the right-of-way of the County Road, to a point due East of the point of beginning; Thence West One Thousand Fit-Six (1056) feet, more or less, to the place of beginning

both of which parcels are located in the Township of Bruce, County of Chippewa, State of Michigan

3. That the State of Michigan and its Agencies such as the Board of Agriculture, and the Board of Trustees of Michigan State University are using and occupying said lands, or a significant portion thereof, without the permission of the plaintiff and are trespassing upon the lands of the plaintiff in violation of the laws and statutes of the State of Michigan and such trespass is willful and continuing, in violation of MCL 600.2918.

4. That the willful and knowing trespass of the State of Michigan on the lands rightfully belonging to your plaintiff entitles your plaintiff to treble damages pursuant to MCL 600.2919.

WHEREFORE, your plaintiff prays that this court,

upon a trial of this matter:

1. Grant judgment to Plaintiff and against the State of Michigan in an amount designed to fully compensate the plaintiff for the loss of the use, benefit and enjoyment, rents and profits of said lands.

2. Grant the plaintiff compound interest, prior to judgment at the highest allowable rate.

3. Award to the plaintiff post judgment interest and the costs of this action including a reasonable attorney fee.

4. Award to the plaintiff such other and further relief as may be appropriate in the premises.

/s/
Jeffrey D. Parker, Tribal Chairman
Bay Mills Indian Community

Peninsula Legal Services, P.C.
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(810) 559-8118

By: /s/
Robert H. Golden P14108

State of Michigan
County of Chippewa SS.

On this 15th day of October, 1996 did appear before me Jeff Parker, Tribal Chairman of the Bay Mills Indian Community and having been put under his oath, acknowledged that he did sign the foregoing complaint as his free act and deed and that the contents thereof are true except where stated upon information and belief, and as to those matters, he believes them to be true

/s/
L. JOHN LUFKINS
Notary Public, Chippewa County
Michigan. My Commission Expires:
May 02, 1999